

PSJ10 Exh 50

1 UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF OHIO

3 EASTERN DIVISION

4 - - -

5 IN RE: NATIONAL PRESCRIPTION

6 OPIATE LITIGATION Case No.

7 1:17-MD-2804

8 APPLIES TO ALL CASES Hon. Dan A.

9 Polster

10 Case No. 1:17-MD-2804

11 - - -

12 January 17, 2019

13 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER

14 CONFIDENTIALITY REVIEW

15 Videotaped deposition of

16 DOUGLAS BOOTHE, held at 250 Hudson Street,

17 New York, New York, commencing at 9:00 a.m.,

18 on the above date, before Marie Foley, a

19 Registered Merit Reporter, Certified

20 Realtime Reporter and Notary Public.

21 - - -

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22 ALSO PRESENT:

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1 foundation.

2 A. Not that I'm aware of.

3 (Pause.)

4 Q. Do you recall that Kadian sales
5 reps were used to market oxymorphone ER at
6 all?

7 MS. WELCH: Objection to form.

8 A. Oxymorphone ER, I believe there
9 was a period of time when we asked the
10 Kadian sales team to send a message, or to
11 deliver a message of availability that
12 that product was still available. I don't
13 think that would be -- in my world,
14 constitute as marketing or promotion. It
15 was a availability reminder.

16 We had a situation where the
17 brand company, which was Endo, had removed
18 the -- certain strengths of their branded
19 oxycodone ER. They had multiple other
20 strengths. And we were the only generic
21 selling, or one of a few generics selling
22 those other strengths. We wanted to make
23 certain that the physician community was
24 made aware that that approved available

1 generic drug was still available for
2 medically necessary patients, because the
3 Endo team was out. They had discontinued
4 and said it was no longer available.

5 Q. And you were doing that so as to
6 maximize the company's results, correct?

7 MS. WELCH: Objection to form.

8 A. We were doing that to let
9 physicians know that that product was
10 still available because others were saying
11 that it had been discontinued, it was no
12 longer available.

13 And, again, it was an
14 FDA-approved medicine for medical
15 necessity.

16 Q. And, was the sales team -- did
17 the sales team receive compensation that
18 was tied to increasing scripts for
19 oxymorphone ER?

20 MS. WELCH: Objection to form;
21 foundation.

22 A. Not that I'm aware of.

23 It was, again, it was a reminder
24 as part of visiting a physician's office

1 with a primary focus on Kadian. Then it
2 was a reminder of -- there may have been a
3 leave-behind, I don't know, to say the
4 product was still available.

5 MS. BAIG: Let's have the next
6 document marked as Exhibit 14.

7 It's Bates stamped
8 ACTAVIS0506794 through '814. It
9 starts as an email from you to Michael
10 Perfetto dated July 15th, 2011. The
11 subject is "Sales rep training
12 material draft."

13 (Boothe Exhibit 14, email chain
14 ending July 15, 2011, with attachment,
15 Bates No. ACTAVIS0506794 to 0506814,
16 was marked for identification, as of
17 this date.)

18 THE WITNESS: (Perusing document.)

19 Okay. Yeah.

20 BY MS. BAIG:

21 Q. If you look at the fifth page
22 in, you see an email from Jinping
23 McCormick to Nathalie Leitch and Terrence
24 Fullem.

1 You don't recall whether it
2 happened or not?

3 A. I don't have any specific
4 recollection, but --

5 Q. And, do you see on the second
6 page of the entire document at the very
7 bottom it says: Nathalie suggested a
8 regional TEAL contest.

9 A. Where is that?

10 Q. At the very bottom of the second
11 page.

12 A. Okay. Yep.

13 Q. And it goes on to state: There
14 are four teams.

15 Do you see that?

16 A. Yes.

17 Q. Does that -- does that give you
18 any indication as to which teams are being
19 involved in this promotion of oxymorphone?

20 MR. DIAMANTATOS: Objection to
21 form --

22 MS. WELCH: Objection to form.

23 MR. DIAMANTATOS: -- foundation;
24 assumes facts.

1 A. Yeah, I mean, I read this and
2 this here are all ideas being generated.
3 Look at the first chart, you see: Meeting
4 is with the 25th. The piece will need to
5 send through regulatory and legal for
6 review and approval.

7 So, the extent to which we did
8 or didn't ever do this was subject, again,
9 to regulatory and compliance approval as
10 well. We may have done it. We may not
11 have done it. I don't specifically
12 remember.

13 Q. So, if you go back to the top of
14 page 2 in the email from Michael Perfetto,
15 do you see where he states: Fine. I
16 don't want to think -- I don't want to
17 overthink this. I approve. Just do it.

18 Does that suggest to you that
19 this was put into place?

20 A. No.

21 Q. And, do you see at the beginning
22 of the very first page in your email to
23 Michael Perfetto it says: FYI only, but I
24 think it's good.

1 Does that suggest to you that it
2 was put into place?

3 A. That's not from me. That's from
4 Mike to me.

5 Q. Yes.

6 Does that suggest to you that
7 this program was put into place?

8 A. It may have been. It may not
9 have been.

10 I -- if you had the agenda from
11 that sales meeting, maybe we could both
12 know the truth.

13 Q. So you don't recall one way or
14 another whether the Kadian sales force was
15 tasked with promoting oxymorphone ER?

16 MS. WELCH: Objection to form;
17 misstates testimony.

18 A. I mean, as I said earlier,
19 there -- I do have a recollection at some
20 point we -- we leveraged or utilized the
21 Kadian sales team to provide information
22 that it was available, our FDA-approved
23 first-in-market generic for these
24 strengths because the Endo product had --

1 Endo discontinued those two strengths. So
2 if there's no -- physicians aren't aware
3 that the strengths are available, they
4 won't write the script, and therefore
5 there will be no prescriptions coming to
6 the generic side of the business.

7 Q. And a little further down on the
8 first page, do you see from Jinping
9 McCormick to Perfetto and others it
10 states: Attached please find a draft
11 oxymorphone training material for sales
12 reps?

13 A. Yeah.

14 Q. And, if you flip through three
15 or four pages, do you see an attachment
16 that appears to be a Power Point entitled
17 "Introduction of Oxymorphone Hydrochloride
18 Extended Release Tablets CII Sales
19 Training Class"?

20 A. Again, if this is connected with
21 that email, I think it's clearly says this
22 is a draft. We'll need to go through
23 regulatory and legal for review and
24 approval.

1 Again, none of the generic products would
2 be detailed to physicians with, you know,
3 some exception. This may have been a
4 limited exception. But generally, the
5 generic products are not -- there's no
6 activity calling on physicians. It's
7 purely a key account sale to the major
8 chains or wholesalers and then reminder
9 notices or communications to pharmacists.

10 Q. Did Actavis also use pricing and
11 incentive programs to try to maximize
12 sales?

13 A. Pricing and incentives programs
14 with whom?

15 Q. With its key clients.

16 MS. WELCH: Objection to form.

17 A. What do you mean by key clients?

18 Q. Well, do you have an
19 understanding of who some of the key
20 clients were, let's say, in the generics
21 division?

22 MS. WELCH: Objection to form.

23 A. So, our customers in the generic
24 division, people who bought our

1 FDA-approved generics, would be either the
2 large direct chains, like a CVS, a
3 Walgreens, a Rite Aid, a large wholesaler
4 like a McKesson, a Cardinal,
5 AmerisourceBergen, mail orders, Express
6 Scripts, Medco, things like that, those
7 are our customers. And yes, there would
8 be -- we would put programs in place
9 potentially to incentivize them through
10 additional rebates to take a bigger basket
11 of our available offerings. You know, at
12 any given time, we may have had 200, 250
13 or 300 SKUs available, and at a given
14 time, we may have 50 of those or 60 of
15 those or a hundred of those on contract at
16 those different accounts.

17 So, part of, you know, Mike and
18 the team's opportunity and challenge was
19 to maybe get additional distribution on
20 our FDA-approved generic products and
21 somehow or potentially, like you said,
22 incentive programs and such would be an
23 incentive providing an additional discount
24 to our customers to take more of our

1 products.

2 Q. And those were typically
3 reflected in the customer agreements.

4 Is that right?

5 A. Yes. There would be customer
6 contracts and then basically you contract
7 on a product-by-product basis and those
8 individual products would have the key
9 terms and conditions. And there may be
10 quarter end rebates or annual rebates
11 based on volume incentive tiers, so that
12 would be tracked throughout the course of
13 the year. Our finance organization would
14 track those. They would accrue
15 potentially for them if they were reached,
16 and then we would make those payments 30
17 or 90 days after the time period had
18 elapsed if the -- if the account achieved
19 the threshold.

20 Q. Did Actavis attend certain trade
21 shows to promote its drugs?

22 MR. DIAMANTATOS: Objection to
23 form.

24 MS. WELCH: Objection to form.

1 A. Could you be specific? What do
2 you mean by trade shows and promote its
3 product?

4 Q. Well, by promote its product, I
5 mean maximize sales.

6 By trade shows, my question is
7 to you.

8 Do you know whether Actavis
9 participated in certain trade shows, or
10 that the marketing and sales departments
11 participated in certain trade shows?

12 MS. WELCH: Objection to form.

13 A. Yes, the generic sales team did
14 attend trade shows, customer events. Yes.

15 Q. What types of trade shows?

16 MS. WELCH: Objection to form.

17 A. There were multiple organization
18 who would organize they would call them
19 vendor events. They would call them
20 technical exchanges. One was the NACDS,
21 which is the National Association of Chain
22 Drug Stores. They would have two events,
23 one in the spring, which was the annual
24 meeting; one in the fall, or late summer,

1 Support Advertising."

2 Do you see that?

3 A. Yes.

4 Q. And there's one that has a tree
5 on it.

6 Do you see that?

7 MS. WELCH: Which Bates number?

8 MS. BAIG: It ends in '577.

9 A. Is that what that thing is to
10 the right? That thing?

11 Q. Well, I could tell you --

12 MS. WELCH: It's a different
13 number, '577.

14 A. This page.

15 Q. Ending '577.

16 A. Sorry. Yeah.

17 Q. Was this what was referred to
18 internally as your tree ad?

19 A. I don't know.

20 Was there an internal ad --
21 thing called tree ad?

22 Q. I can just tell you that Jinping
23 told me about a tree ad, but I didn't have
24 a picture of it. But now I'm looking at

1 this and I'm wondering if this is the tree
2 ad.

3 A. It's got a tree in it.

4 Q. Did you ever contract with your
5 distributor customers for marketing
6 services?

7 MS. WELCH: Objection to form.

8 A. I think the answer is yes, but
9 I'd be happy to comment to a document.

10 Q. Do you recall entering into
11 negotiations with big distributors like
12 McKesson such that you would pay marketing
13 fees to them?

14 MS. WELCH: Objection to form.

15 A. I think it's the other way
16 around. I mean, the way the McKesson
17 contracts were is they charged you
18 marketing fees for the privilege of
19 selling product to them.

20 Q. They were charging Actavis
21 marketing fees?

22 A. Mm-hm.

23 Q. So you would pay marketing fees
24 to --

1 A. Right, but it wasn't like we
2 negotiated. We didn't really get much
3 marketing. They -- that was part of
4 their -- McKesson if it was Progen
5 generics in their fee structure, they
6 charged you for marketing fees, they
7 charged you for data fees, they charged
8 you for warehousing fees. That was all
9 part of the program. And that was pretty
10 typical for the large wholesalers.

11 On occasion we would contract,
12 for example, to utilize their network of
13 pharmacists as part of their awareness ads
14 for new product launches, we would pay
15 them so they could, through their network,
16 share our information. That was when you
17 asked the first question about did I
18 contract for services, that's what I was
19 referring to, is my understanding.

20 MS. BAIG: Let's have this
21 document marked as Exhibit 16.

22 It's Bates stamped
23 ACTAVIS0811957 through '959. It's an
24 email from you to Mike Perfetto on

1 October 12th, 2011.

2 MS. WELCH: Where are you?

3 THE WITNESS: What's that?

4 MS. BAIG: I was just stating
5 what it is.

6 THE WITNESS: That's not the one
7 I have.

8 MS. WELCH: That's not the one I
9 have either.

10 (Pause.)

11 MS. WELCH: This has a 1969
12 bottom Bates number.

13 MS. BAIG: No, I think you've
14 got the wrong one.

15 THE WITNESS: Here you go
16 (handling.)

17 MS. BAIG: Thank you.

18 (Pause.)

19 MR. DIAMANTATOS: I wrote
20 Exhibit 16 on my copy, counsel. In
21 case you want to switch it out with an
22 exhibit sticker.

23 MS. BAIG: Okay.

24 MS. WELCH: So did I.

1 again, these regional wholesalers, they
2 have pharmacies who buy off of their
3 program. So, to the extent of which we
4 got a product award of Morris Dixon,
5 Morris Dixon may send a notice to its
6 pharmacies with here's the Actavis
7 product, it's available. Here's the
8 transfer price. That's the information
9 that they would provide to their
10 pharmacies. If that constitutes marketing
11 on behalf of Actavis, that answer would be
12 yes, but that's not something that Actavis
13 would have done or paid for.

14 Q. But you would have marketing --
15 so, how is that different from the
16 marketing agreements we talked about just
17 a few moments ago if you had -- where
18 you're paying a marketing fee to somebody
19 like McKesson?

20 A. So, again, McKesson, one of the
21 largest big three wholesalers. Again,
22 quite frankly, they set the terms. So, in
23 their contract, they charged us fees.
24 Cardinal would do the same thing, a

1 percentage of WAC, percentage of AWP. It
2 was sort of in their contract for the
3 privilege of doing business with them.

4 Some of these smaller accounts
5 are much smaller. They didn't have the
6 ability to push their fees on to the
7 suppliers. But if we wanted to
8 potentially communicate product
9 availability or when we got a product
10 award to the one of these accounts and we
11 wanted to communicate to their members or
12 their affiliates, we may have paid a -- a
13 fee. It could have been \$5,000 or some
14 number. I don't know specifically. But
15 that's my recollection of how it worked
16 with the smaller accounts versus the
17 larger accounts.

18 Q. I'm not talking about fees in
19 general though. I'm talking about
20 something called marketing fees.

21 Are you familiar with paying
22 marketing fees to someone like McKesson?

23 MR. BAILEY: Objection to form.

24 A. Again, that's what I described.

1 Q. Okay.

2 A. So, in the contract, they
3 charged a marketing fee as a percentage of
4 the total business. So if we're doing \$10
5 million with them, they charge you one
6 percent, you're paying a hundred thousand
7 dollars for marketing fees. You know, we
8 didn't really have a choice. It's like a
9 franchise fee at like McDonald's or
10 something.

11 Q. So they didn't charge additional
12 marketing fees for doing things like
13 telephone campaigns or things like that?

14 A. Yes, we did. If we opted --

15 MR. BAILEY: Objection.

16 A. Yes. If we engaged with -- to
17 get access to their accounts that were on
18 their programs, we would pay additional
19 fees, and they call them marketing fees.

20 Q. Okay.

21 MS. BAIG: Let's have this
22 document marked as Allergan -- as
23 Exhibit Number 16, and this is Bates
24 stamped ACTAVIS0851197 through '11960.

1 (Boothe Exhibit 16, email chain
2 ending October 12, 2011, Bates No.
3 ACTAVIS0811957 to 0811960, was marked
4 for identification, as of this date.)

5 BY MS. BAIG:

6 Q. It's an email from you to Mike
7 Perfetto dated October 12th, 2011, or it
8 starts that way.

9 A. (Perusing document.)

10 Q. Do you see on the last page at
11 the top there's a reference to "a new
12 sales slick out by week's end" and then it
13 says "Costco add"?

14 A. Yeah.

15 Q. What's your understanding of
16 what a sales slick is?

17 A. I'm not sure.

18 Q. And, was Costco a place where --
19 where there were direct ads?

20 MS. WELCH: Objection;
21 foundation; form.

22 A. Costco was one of our customers.
23 They would -- they would purchase -- they
24 had a generic formulary. So yes.

1 Q. So, if you entered into a
2 contract with one of your customers, like
3 McKesson, to do telemarketing of one of
4 your products, would you personally have
5 reviewed the scripts that they were using
6 as --

7 A. No.

8 Q. -- part of that telemarketing?

9 A. Me personally, no.

10 Q. Okay. Would your marketing
11 department have reviewed those scripts, if
12 you know?

13 MS. WELCH: Objection;
14 foundation.

15 A. I don't know. Possibly, but I'm
16 not sure.

17 Q. Can you identify all the
18 organizations that Actavis would have used
19 to market or promote its drugs, that you
20 can think of right now?

21 MR. DIAMANTATOS: Objection to
22 form.

23 MS. WELCH: Objection to form.

24 MR. DIAMANTATOS: Time.

1 A. Can you repeat the question,
2 please?

3 Q. Can you identify all the
4 organizations that Actavis would have used
5 to market or promote its drugs, that you
6 can think of right now, its opioid drugs?

7 MS. WELCH: Objection to form.

8 A. The -- the -- sorry. One more
9 time.

10 Just the firms that --

11 Q. The organizations that Actavis
12 would have used, perhaps contracted with,
13 to do marketing for its opioids.

14 MR. DIAMANTATOS: Objection.

15 MS. WELCH: Same objection.

16 A. Again, we didn't market our
17 generic products. I think these questions
18 are all about when we would enter into a
19 contract for distribution of our
20 FDA-approved medicines with DEA and
21 FDA-approved supply -- distributors, such
22 as McKesson, there would be a contract
23 price that determined the transfer price.
24 We may have also then contracted for

1 marketing services that McKesson -- we pay
2 McKesson for them to communicate to its
3 member affiliate companies that our
4 product was available.

5 Q. And that would have come out of
6 your --

7 A. And that's --

8 Q. Sorry. Go ahead.

9 A. No. If that's what you mean by
10 marketing, that would be yes.

11 So, if you look at all the
12 available licensed DEA-approved
13 distributors and wholesalers, Cardinal,
14 McKesson, AmerisourceBergen, there's many,
15 many smaller ones, direct chains like
16 Wal-Mart, Walgreens, Rite Aid, CVS,
17 Express Scripts, Medco, those are the
18 firms that we contracted with for
19 distribution of our FDA-approved
20 medicines.

21 Q. But I'm not asking specifically
22 about distribution. I'm asking more about
23 marketing.

24 So, I've seen, for example,

1 marketing agreements that you had with
2 McKesson. They're separate. They're
3 separate or they might be a component of
4 the overall agreement with McKesson, but
5 it's specific to marketing.

6 I'm just wondering what other
7 types of organizations, apart from perhaps
8 big distributors, you engaged to help with
9 promotion or marketing. We've talked
10 already about, on the brand name side,
11 we've talked about inVentiv.

12 Are there any others that you
13 can think of as you sit here right now?

14 MS. WELCH: Objection to form.

15 MR. DIAMANTATOS: Objection to
16 form.

17 A. It would certainly be helpful if
18 you provide me a document, something to
19 review.

20 Q. Sure.

21 I'm just asking for your best
22 recollection right now as to --

23 A. And my best recollection --

24 Q. You can't think of any?

1 system, that would be identified as a --
2 an order to investigate, not a fraudulent
3 order, just a -- and then with that, we
4 would go back to the customer service team
5 and/or the commercial rep would call the
6 purchaser at that and say, you know, why
7 did you order 1500. A place like
8 AmerisourceBergen, which by the way, I
9 think they had 62 distribution centers at
10 one point. So they were also managing
11 their inventory within the dist -- so,
12 once we shipped it to AmerisourceBergen in
13 the past, one of their locations, if they
14 opted to move it from one of their
15 locations to one of the other locations in
16 their network and then because of that it
17 triggered a reply order from when they
18 moved it from one to there and the
19 distribution center back to us, we didn't
20 have that information. So when that order
21 came in, if it potentially raised a
22 signal, then we would go and investigate
23 it and if that's what the rationale, that
24 was the basis for the customer describing

1 why they moved product around, why they
2 needed to order it back for our -- for
3 their distribution center and we believe
4 that that was appropriate, we would have
5 then released the order.

6 Q. And, what if you got a rationale
7 that you did not believe it was
8 appropriate, did you halt shipment?

9 MR. DIAMANTATOS: Objection to
10 form.

11 A. Yeah, we would not -- we would
12 halt shipment. We would not accept the
13 order.

14 And many times we would get
15 orders in, and based on the information,
16 we would say there's no justification for
17 ordering 10,000 bottles. Your model --
18 our say 1500, 2,000. We would then adjust
19 the order. They would submit a new DEA
20 222 form, and if the order was within that
21 threshold, we would accept it and we would
22 ship it. And I believe that that happened
23 frequently.

24 Q. And, to the extent that that

1 happened, that would be saved in the
2 files.

3 Is that right?

4 MS. WELCH: Objection to form;
5 foundation.

6 A. The files.

7 Q. There was a record that was kept
8 of orders that was -- that were flagged as
9 being of interest or suspicious, and the
10 justifications received or not received
11 and whether they were shipped or not
12 shipped.

13 Is that right?

14 MS. WELCH: Objection to form;
15 foundation.

16 A. That would be my understanding,
17 some sort of, yes, some sort of record
18 because, again, from a compliance
19 perspective, we operate also under a DEA
20 license, and the DEA had the right and the
21 authority to come in to inspect and
22 validate, which they did, you know, on a
23 frequent basis. So that would likely be
24 something that they would want to monitor

1 that's hundreds of pages, so.

2 MS. BAIG: I'm talking about the
3 letter.

4 This document was produced
5 together by Actavis.

6 A. So, in answer to your question,
7 do I remember receiving a warning letter,
8 I'm looking at the fax machine.

9 If I didn't -- I mean, it came
10 to my attention, my address. So, yes, I
11 received it. I reviewed it.

12 Q. And, in response to this letter,
13 were there changes that were made with
14 respect to the Kadian promotional
15 materials?

16 MS. WELCH: Objection to form.

17 A. Yes.

18 Q. And some of those we talked
19 about earlier, correct?

20 MS. WELCH: Objection to form.

21 A. Could you be more specific?

22 Q. Did you serve on a generic
23 manufacturers advisory board?

24 A. No.

1 Q. You never did?

2 A. Are you referring to the GPHA?

3 Q. Were you on a -- did you serve
4 on the board of GPHA?

5 A. Yes.

6 Q. What does GPHA stand for again?

7 A. Generic Pharmaceutical
8 Manufacturing Association.

9 Q. Yes, that's right.

10 How long did you serve on that
11 board?

12 A. 2006 til 2014 or '15 with maybe
13 some breaks in between subject to my
14 employment at certain places.

15 Q. Okay.

16 A. That's not an advisory board
17 though.

18 Q. What is the GPHA?

19 A. It's the -- it's the lobbying
20 association for generic manufacturers.
21 It's an organization based in Washington,
22 D.C. that generic companies have the
23 option to be members of, and then the GPHA
24 advocates on behalf of generic

1 manufacturers both federally and at state
2 level on issues that are pertinent to
3 generic manufacturers. It's the generic
4 equivalent of what everybody's more
5 familiar with called PhRMA, which is the
6 branded pharmaceutical lobbying advocacy
7 organization.

8 Q. And, did you serve on the PhRMA
9 board as well?

10 A. No. We were never members of
11 PhRMA.

12 Q. Okay. And, what about NACDS?

13 A. No.

14 Q. Did you attend NACDS meetings?

15 A. Yes.

16 Q. And, with respect to the
17 lobbying, GPHA, do you recall working on
18 any lobbying that would have impacted
19 opioids?

20 MR. DIAMANTATOS: Objection to
21 form; foundation; assumes facts.

22 MS. WELCH: Objection to form.

23 A. No.

24 And, again, I'm not a